Office-Supreme Court, U.S.
FILED
NOV 7 1964
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1964.

No. 510.

ANTHONY GIANFRANCESCO,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

BRIEF OF RESPONDENT
In Opposition to Petition For Writ of Certiorari to The Supreme Court of Ohio.

CLYDE W. OSBORNE,
Prosecuting Attorney,
LOREN E. VAN BROCKLIN,
Assistant Prosecuting Attorney,
Mahoning County Court House,
Youngstown, Ohio,
Counsel for Respondent State of Ohio.

EDWARD L. WILLIAMS,
W. GLENN OSBORNE,
1101-3 Union National Bank Building,
Youngstown, Ohio,
Counsel for Petitioner.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—PHONE: 521-5647

INDEX.

Citations to Opinions Below 1

Constitutional Provisions Involved:

Amendment IV 2

Amendment XIV, Section 1 2

Questions Presented 2

Statutes Involved 3

Statement 3

Argument 5

Conclusion 8

Appendices:

A. Opinion; Journal Entry; Appeal From the Court of Appeals; Motion For Leave to Appeal From the Court of Appeals; Rehearing 9

B. Statutes 16

C. Excerpts From the Record 17

CITATIONS.

Cases.

Boyett v. United States, 48 F. (2d) 482 8

Harris v. United States, 331 U. S. 145; 91 L. Ed. 1399 6

Henry v. United States, 361 U. S. 98, 102, 4 L. Ed. (2d) 134 7

Ker v. California, 374 U. S. 23 6

Mapp v. State of Ohio, 367 U. S. 643; 6 L. Ed. (2d) 1081, 81 Sup. Ct. 1684 6

State v. Beck, 175 O. S. 73 6

Wong Sun et al. v. United States, 371 U. 471 7

Constitution and Statutes.

Constitution of the United States:

Amendment IV 2

Amendment XIV 2

Ohio Revised Code:

Section 1.06 ..... 3, 16

Section 2915.13 ..... 3, 16

Section 2935.03 ..... 3, 5, 16

Section 2935.04 ..... 3, 5, 17

In the Supreme Court of the United States

OCTOBER TERM, 1964.

No. 510.

ANTHONY GIANFRANCESCO,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

BRIEF OF RESPONDENT
In Opposition to Petition For Writ of Certiorari to The Supreme Court of Ohio.

CITATIONS TO OPINIONS BELOW.

The Court of Common Pleas (the trial court) of Mahoning County, Ohio issued no written opinion. The decision of the Court of Appeals, Seventh Judicial District, State of Ohio, sustaining the Trial Court, is unreported. Said Appellate Court issued a written opinion. (Appendix A, page 9.)

The Supreme Court of Ohio journalized their entries dismissing the appeal for the reason that no substantial constitutional question exists, and overruled the motion for leave to appeal. They did not write an Opinion. (Appendix A, page 14.)

CONSTITUTIONAL PROVISIONS INVOLVED.

Amendment IV.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Amendment XIV, Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

QUESTIONS PRESENTED.

(1) Whether the Trial Court violated the constitutional rights of the Petitioner, as protected by the IV. and the XIV Amendments of the Constitution of the United States, by failing to sustain a motion to suppress certain evidence which had been obtained as an incident of a lawful arrest of Petitioner without a warrant and a contemporaneous search of Petitioner's car at the time of said lawful arrest.

(2) Whether the Trial Court violated the constitutional rights of the Petitioner as protected by the XIV Amendment of the Constitution of the United States by inquiring of the jury whether or not there was a reasonable chance of reaching a verdict.

STATUTES INVOLVED.

Ohio Revised Code Section 1.06, see Appendix B, page 16; Ohio Revised Code Section 2915.13, see Appendix B, page 16; Ohio Revised Code Section 2935.03 see Appendix B, page 16; Ohio Revised Code Section 2935.04, see Appendix B, page 17.

STATEMENT.

The Petitioner, Anthony Gianfrancesco, was indicted by the Grand Jury of Mahoning County, Ohio. The indictment charged the Petitioner with a violation of Ohio Revised Code Section 2915.13 (Promoting A Numbers Game), see Appendix B, page 16. Prior to the trial, Petitioner filed a motion to suppress the evidence. After hearing said motion was overruled by the Trial Court.

The Record discloses that on August 17, 1962, two officers of the Youngstown Police Department approached the parking lot adjacent to the Atlantic Mills Discount Store on Belmont Avenue in the city of Youngstown, Ohio. The Record further discloses that as the officers approached the parking lot they saw Petitioner seated in a 1958 Buick automobile. The Buick car was parked about two aisles from where they pulled in to the lot. The police car was operated by officers Francis Gallagher and Robert R. Zins. These officers were acquainted with the Petitioner (R. 14, ll. 7-13, Appendix C, page 17.) Officer Zins told Officer Gallagher to stop the police car and he alighted from the police car and approached the automobile in which the Petitioner was seated. As Officer Zins approached the vehicle in which Petitioner was seated, Petitioner was asked by Officer Zins what he was doing and what he had. Petitioner Gianfrancesco handed Officer Zins several numbers slips that the Officer had previously seen lying on the

front seat of the 1958 Buick automobile. (R. 15 and 16, Appendix C, page 17.) By that time Officer Gallagher was approaching Petitioner's car and the numbers slips were shown by Officer Zins to Officer Gallagher. Petitioner was immediately placed under arrest by the Officers and ordered to get out of the car. He was informed of his arrest and informed that the Officers were going to search his person and the car in his possession (R. 15-16, Appendix C, page 18.)

The Officers searched the person of Petitioner and his automobile. Numbers slips were found lying on the front seat. The Officers found slips underneath the front floor mat with twenty dollars in small change. Before Gianfrancesco got out of the car he attempted to stuff some rundown sheets and numbers slips between the crack of the front seat of the automobile. Petitioner was also in possession of tally sheets. (R. 20, ll. 7-8, Appendix C, page 21.)

The Petitioner was immediately taken by the officers to the Youngstown Police Department where an affidavit and warrant for arrest were immediately obtained. The evidence was initialed and tagged by the officers and placed in a secure locker in the police department. Under date of February 13, 1963, this case came on for trial before a jury. On February 14, 1963, the jury returned a verdict of guilty as charged in the indictment. Subsequent to the trial, Petitioner filed a motion for a new trial and an application for probation. Open court hearings were held on these motions and the trial Judge overruled both motions, and Petitioner was sentenced to a term of not less than one nor more than ten years in the Ohio State Penitentiary. The case was appealed to the Court of Appeals, Seventh Judicial District, Mahoning County, Ohio,

which affirmed the judgment of the Court of Common Pleas. The Supreme Court of Ohio at a later date affirmed the judgment of the Court of Appeals.

ARGUMENT.

Petitioner alleges in point I that the Trial Court erred in overruling defendant's motion to suppress the evidence. The Court's attention is directed to Ohio Revised Code Section 2935.03. (Appendix B, page 16.) It provides in relevant part that an officer without a warrant can arrest a person found violating a statute of the State of Ohio.

> "A sheriff, deputy sheriff, marshal, deputy marshal, watchman, or police officer shall arrest and detain a person found violating a law of this state, or an ordinance of a municipal corporation, until a warrant can be obtained."

Petitioner was arrested without a warrant, for what the arresting officers believed and had probable cause to believe was a commission of a felony in this state. Ohio Revised Code Section 2935.04 (Appendix B, page 17) prescribes under what circumstances an arrest may be made without a warrant.

Ohio Revised Code 2935.04:

> "When a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained."

The courts have uniformly held that the general rule is that an officer making a lawful arrest may search the person and the premises where he is arrested without a

search warrant, if such search is reasonably incident to such arrest. The Supreme Court of the United States has taken this position in the case of *Harris vs. The United States*, 331 U. S. 145; 91 L. Ed. 1399.

Petitioner puts great reliance on *Mapp vs. The State of Ohio*, 367 U. S. 643; 6 L. Ed. (2d) 1081, 81 Sup. Ct. 1684. It is brought to this court's attention that the *Mapp* case is certainly not in point in this matter. In the *Mapp* case there was an unlawful arrest and search made. The evidence discloses that as Officer Zins approached the car, he saw the numbers slips and these slips were handed to the officer by Petitioner at which time he was placed under arrest and the following search was an incident to and a part of the lawful arrest.

A recent case decided by the Supreme Court of Ohio reported as *State vs. Beck*, 175 O. S. 73 wherein the Court holds:

> "All searches and seizures without warrants are not prohibited by law. The search of an individual's person on the honest belief of an arresting officer, based upon probable cause that a felony has been committed, does not constitute an unlawful search and incriminating articles seized during the search may properly be received in evidence against the individual at his trial for having in his possession such articles."

In the case of *Ker vs. California*, cited at 374 U. S. 23, the Supreme Court of the United States held:

> "The doctrine that a search without warrant may be lawfully conducted as an incident to a lawful arrest has long been recognized as consistent with the Fourth Amendment's protection against unreasonable searches and seizures."

Certainly this search and seizure was made as an incident to a lawful arrest. It is submitted that point I is

not well taken. Petitioner makes a great point of trying to prove by a recitation of some of the evidence adduced upon cross-examination that the police officer was not an expert. Certainly this officer who is a college graduate is very familiar with the appearance of gambling slips and is competent to testify as to what he saw and observed at the time of the lawful arrest of the Petitioner.

Petitioner relies on the case of *Wong Sun et al. vs. The United States*, 371 U. S. 471. This case is not in point for the reason that reasonable grounds and probable cause do exist in the case at bar. In the instant case, the court below could reasonably infer and find that probable cause did exist and that a search without a warrant was lawfully conducted as an incident to a lawful arrest.

It is true that Petitioner was arrested without a warrant and a search conducted founded upon the proposition that the arresting officer believed and had probable cause to believe that a felony had been committed. The United States Supreme Court in the case of *Henry vs. United States*, 361 U. S. 98, 102, 4 L. Ed. 2d 134 said:

> "Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed."

A question of fact is presented in each case. The Youngstown Police Officer had good reason to believe that Gianfrancesco was regularly engaged in carrying on a scheme of chance involving policy tickets.

Petitioner alleges that the trial court committed error when the trial court called the jury into the courtroom during the course of deliberation to determine whether or not there was a reasonable chance of soon reaching a verdict. (R. 142, Appendix C, pages 22-23.) There is nothing whatsoever objectionable in the language used by the Court of Common Pleas. The Judge refrained from in-

dicating to the jury his opinion as to the guilt or innocence of the accused. He did not try to intimidate or coerce the jury in any degree. He did not in any manner force the jury to do anything at all. The jury reached its verdict on the evidence, and the Court, by making this inquiry, did not commit error. In the case of *Boyett vs. The United States*, 48 F. (2d) 482, the trial court indicated to the jury that they were not willing to follow his instructions. (Not so in this case.) The Court also inferred that there should "not be any great difficulty in arriving at a verdict." The trial court in the case at bar did not indicate to the jury that they were derelict in their duty and he did not indicate that he intended to keep them sequestered until they reached a verdict.

Certainly it can not be said that the judgment and finding of guilty in this case was contrary to law and against the manifest weight of evidence. In this case there was direct and positive proof of Petitioner's participation in the crime alleged. Numbers slips, tally sheets, and money were found in the possession of the Petitioner.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the judgment of the court below should be sustained.

CLYDE W. OSBORNE,
Prosecuting Attorney,
LOREN E. VAN BROCKLIN,
Assistant Prosecuting Attorney,
Court House, Mahoning County,
Youngstown, Ohio,
Counsel for the State of Ohio.

APPENDIX A.

OPINION OF THE COURT OF APPEALS OF MAHONING COUNTY, OHIO.

(Dated: October 15, 1963.)

JONES, J.

Anthony Gianfrancesco was indicted by the Mahoning County, Ohio, Grand Jury, May Term 1962. He was charged with a violation of Revised Code Section 2915.13.

On the tenth day of December, 1962, counsel for Gianfrancesco filed a motion to suppress evidence, which was subsequently overruled by the trial court. The case went to trial and a jury on the fourteenth day of February, 1963, returned a verdict of guilty as charged in the indictment.

Subsequent to the trial defendant filed a motion for new trial and an application for probation. Both motion and application were overruled by the trial court, and Gianfrancesco was sentenced to a term of not less than one nor more than ten years in the State Penitentiary.

The matter is now before this Court on an appeal from the judgment of the Court of Common Pleas of Mahoning County, Ohio.

On the seventeenth day of August, 1962, at about 3:45 p.m. Gianfrancesco was seated in a 1957 Buick automobile in a parking lot adjacent to the Atlantic Mills Department Store on Belmont Avenue in the City of Youngstown, Ohio. At this time a police officer of the City of Youngstown approached the vehicle in which Gianfrancesco was seated. The officer requested that Gianfrancesco hand to him certain pieces of paper that were lying on the front seat of the automobile. The paper slips were numbers tickets. Gianfrancesco was then placed under arrest, and a search was made of the automobile. Num-

bers slips were found lying on the front seat, underneath the front floor mat, and tucked between the crack of the front seat of the automobile. Gianfrancesco was then taken by the officer to the Youngstown Police Department, where an affidavit and warrant for arrest were immediately obtained.

The first assignment of error charges that the trial court erred in overruling Gianfrancesco's motion to suppress evidence. This evidence, of course, was the slips and tally sheets obtained as the result of the search conducted in the Buick automobile at the parking lot.

Section 2915.13, Revised Code, states as follows:

> "No person shall establish, open, set on foot, carry on, promote, make, draw, or act as 'backer' or 'vendor' for or on account of a scheme of chance known as 'policy,' 'numbers game,' 'clearing house,' or by words or terms of similar import, located in or to be drawn, paid, or carried on within or without this state, or by any of such means sell or expose for sale anything of value.
>
> "Whoever violates this section shall be fined not less than five hundred nor more than one thousand dollars and imprisoned not less than one nor more than ten years."

It has been held that where the violation of a criminal statute carries a penalty of a substantial fine and imprisonment for a period of one or more years and the person convicted under the statute is sentenced to the penitentiary, his offense is classed as a felony. *Ex parte Thorpe*, 66 Ohio App. 128, 32 N. E. (2d) 571, affirmed, 137 Ohio St. 325, 30 N. E. (2d) 335.

Section 1.06, Revised Code, states as follows:

> "Offenses which may be punished by death or by imprisonment in the penitentiary are felonies; all other

offenses are misdemeanors. As used in the Revised Code 'minor offense' is synonymous with misdemeanor."

The Youngstown police officer had good reason to believe that Gianfrancesco was regularly engaged in carrying on a scheme of chance involving numbers tickets. The defendant was arrested, without a warrant, for what the arresting officer believed and had probable cause to believe was a commission of a felony. Section 2935.04, Revised Code, describes when an arrest may be made without a warrant, and reads as follows:

"When a felony has been committed, or there is a reasonable ground to believe that a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained."

From the evidence it appears without question that the officer had probable cause for making the arrest.

The United States Supreme Court in the case of *Henry vs. United States*, 361 U. S. 98, 102, 4 L. Ed. (2d) 134, 80 S. Ct. 168, said:

"Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed."

A question of fact is presented in each case, and when the facts within the knowledge of the police officer are sufficient to cause a reasonable and prudent man to believe that a felony has been committed and that the accused has committed it, probable cause is present. *State of Ohio vs. Beck*, 175 Ohio St. 73.

A police officer is authorized, without a warrant, to

arrest a person found to be in violation of the law, although such police officer has no such previous knowledge of the fact, if such police officer acts bona fide and upon such information as induces an honest belief that the person arrested is in the act of violating the law. See *Porello vs. State of Ohio*, 121 Ohio St. 280.

The remaining question, as respects this assignment of error, is then: Should the evidence obtained following the lawful arrest be suppressed as being "unlawfully obtained"? We think not. Once again we turn to the *Beck* case where the court held that:

> "All searches and seizures without warrants are not prohibited by law. The search of an individual's person on the honest belief of an arresting officer, based upon probable cause that a felony has been committed, does not constitute an unlawful search, and incriminating articles seized during the search may properly be received in evidence against the individual at his trial for having in his possession such articles." *State vs. Beck*, 175 Ohio St. 73, Syllabus 1.

Coming now to the fifth assignment of error that the trial court erred in its supplemental charge to the jury. We are of the opinion that the giving to the jury of the definition of the word "promoting" was discretionary upon the trial court, and find no abuse thereof.

For the final assignment of error appellant argues that the court called the jury into the courtroom during the course of their deliberations to determine whether or not there was a reasonable chance of soon reaching a verdict. The trial court said:

> "The Court: You are hard-working jurors.
>
> "You will have to stay until you reach a verdict. So then I would ask you whether there is a reasonable chance of reaching a verdict. Who is your foreman?

"Jury Foreman: I am, Your Honor.

"The Court: What do you say?

"Jury Foreman: I wish I knew.

"The Court: Give you another half hour?

"Jury Foreman: We are closer to a verdict, but I don't know whether we will ever reach one, to tell you the truth.

"The Court: Well, why don't you go and try for another half hour and let the court know by the buzzer when you are ready and we will reconsider this matter at that time. All right. Thank you."

It is this language that appellant claims to be objectionable and prejudicial. We are unable to conclude that this language has such an obvious meaning one way or the other as to be objectionable.

As to the other errors assigned we find nothing contained therein to the prejudice of this defendant.

We are, therefore, of the opinion that the evidence properly justified the finding that Gianfrancesco was guilty as charged.

The judgment of the Court of Common Pleas is hereby affirmed.

BROWN, *P.J.*, Concurs.

FRANCE, *J.*, Concurs.

APPROVED:

GEORGE M. JONES,

Judge.

JOURNAL ENTRY OF THE COURT OF APPEALS OF MAHONING COUNTY, OHIO.

This cause came on for hearing upon the appeal on questions of law, assignments of error, bill of exceptions, the transcript, and the original papers and pleadings from the Court of Common Pleas of Mahoning County, Ohio, and was argued by counsel, the Court examined all of the claims of error, on consideration whereof the Court finds there is no error apparent on the record in said proceedings and judgment prejudicial to the Appellant.

It is, therefore, considered by the Court that the judgment of the Court of Common Pleas be, and the same is hereby affirmed.

It is further ordered that a special mandate be sent to the Common Pleas Court of Mahoning County, Ohio directing the Court of Common Pleas to carry this judgment into execution. To all of which, Appellant, by his counsel excepts.

ORDER OF THE SUPREME COURT OF OHIO DISMISSING APPEAL.

(March 18, 1964.)

This cause, here on appeal as of right from the Court of Appeals for Mahoning County was heard in the manner prescribed by law and upon motion of the appellee to dismiss such appeal.

On consideration thereof, such appeal is dismissed for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the Court of Common Pleas to carry this judgment into

execution: and that a copy of this entry be certified to the Clerk of the Court of Appeals for Mahoning County for entry.

ORDER OF THE SUPREME COURT OF OHIO OVERRULING MOTION FOR LEAVE TO APPEAL.

(March 18, 1964.)

MOTION FOR LEAVE TO APPEAL FROM THE COURT OF APPEALS FOR MAHONING COUNTY.

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by Anthony Gianfrancesco.

ORDER OF THE SUPREME COURT OF OHIO DENYING REHEARING.

(April 22, 1964.)

It is ordered by the Court that rehearing in this case is denied.

APPENDIX B.

STATUTES.

Ohio Revised Code Section 1.06:

Offenses which may be punished by death or by imprisonment in the penitentiary are felonies; all other offenses are misdemeanors. As used in the Revised Code "minor offense" is synonymous with misdemeanor.

Ohio Revised Code Section 2915.13:

No person shall establish, open, set on foot, carry on, promote, make, draw, or act as "backer" or "vendor" for or on account of a scheme of chance known as "policy," "numbers game," "clearing house," or by words or terms of similar import, located in or to be drawn, paid, or carried on within or without this state, or by any of such means sell or expose for sale anything of value.

Whoever violates this section shall be fined not less than five hundred nor more than one thousand dollars and imprisoned not less than one nor more than ten years.

Ohio Revised Code Section 2935.03:

A sheriff, deputy sheriff, marshal, deputy marshal watchman, or police officer shall arrest and detain a person found violating a law of this state, or an ordinance of a municipal corporation, until a warrant can be obtained.

A constable within the limits of the township in which said constable has been appointed or elected, shall arrest and detain a person found by him in the commission of a misdemeanor, either in violation of a law of this state or an ordinance of a village, until a warrant can be obtained.

Ohio Revised Code Section 2935.04:

When a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained.

APPENDIX C.

Direct Examination of Officer Robert R. Zins.

By Mr. Van Brocklin.

Record 14, lines 7 through 12:

Q. When you approached that parking lot and you drove in what did you see, if anything?

A. I saw Mr. Gianfrancesco's car parked about two aisles up from us from where we pulled in.

Q. Were you acquainted with Gianfrancesco?

A. Yes, I was.

Record 15 and 16:

Q. Then as you approached this vehicle did you say anything to Gianfrancesco?

A. I asked him what he was doing there and I asked him what he had.

Q. What did he do, if anything?

A. He handed me the slips.

Q. He handed you the slips?

A. Yes, sir.

Q. What did you then do?

A. Well, by that time Officer Gallagher was approaching Gianfrancesco's car and I showed the slips to Officer Gallagher.

Q. Then did you do anything?

A. We placed him under arrest, and Officer Gallagher —well, we told Gianfrancesco to get out of the car.

Record 16, lines 17 through 22:

A. Well, we placed him under arrest first, and then we, Officer Gallagher searched him and I searched the car.

Q. When you searched the car what did you find?

A. In the crack of the seat there were some slips, and laying on this front seat there were some slips, and underneath the right floor mat was some $20 in change.

Record 16, lines 23 through 25:

Q. Now, Mr. Zins, I am going to hand to you what has been marked for identification purposes as State's Exhibit I (A) through (E). I now ask you to examine these slips and tell us whether or not you have ever seen them before?

Record 17:

A. Yes, sir. These were the slips that were laying on his front seat when I saw him when I first approached the car.

Q. What, if anything, was done with those slips?

A. Well, when I approached the car these were laying—the slips themselves were laying face down and the pad was laying face down also, and when I asked him what he had there, why he picked up the pad and handed it to me.

Q. Are there numbers on the reverse side of that pad?

A. Yes, sir, there are numbers on the reverse side, too.

Q. Are you familiar with what that is?

A. The numbers here?

Q. Yes.

A. Yes, sir.

Q. What are they?

A. Well, they are numbers taken off of the races and the stock market.

Q. Can you tell us whether or not those numbers are used in the numbers game?

A. Yes, sir.

Mr. Nybell: I object, Your Honor.

The Court: Sustained.

Q. How long were you assigned to the Intelligence Division of the police department?

A. One year.

Record page 18:

Q. In the course of your official employment did you have occasion to investigate the numbers game?

A. Yes, sir. That was the main objective.

Q. Are you familiar with what numbers slips look like?

A. Very.

Q. Have you made any arrests of people playing and selling this?

A. Yes, I have.

Q. Based on your experience as a policeman, can you now tell us whether or not those are numbers slips?

Mr. Nybell: I object, Your Honor.

The Court: Overruled.

Q. You may answer.

A. Yes. I could tell that they were number slips.

Q. I now ask you whether or not you did anything with those slips?

A. I marked them as evidence. I put my initial on them and dated them.

Q. What is your initial?

A. R. R. Z.

Q. And when did you initial those?

A. We brought them directly to the police department and I initialed them in the office of the Intelligence & Security Squad.

Record page 19:

Q. I now hand you what has been marked for identification purposes as State's Exhibit Number 2(A) through (SS), and I now ask you to open that package, and tell us whether or not you have ever seen them before?

A. These slips I found stuffed between the crack of the seat, between the back rest and the seat of his car.

Q. Of whose car?

A. Mr. Gianfrancesco's car.

Q. What, if anything,—withdraw that. I want you to leaf through those sheets and tell us whether or not you did anything with those bug slips.

A. I also marked these as evidence and dated them, each and everyone of them.

Q. Did Mr. Gallagher do anything?

A. Yes. His initials are directly below mine.

Record page 19:

Q. After you arrested Gianfrancesco what did you do with those slips?

A. Took them to the office of the Intelligence & Security Squad and locked them in the locker.

Q. Based on your experience as a policeman could you tell us what these papers in State's Exhibit Number 2 are?

A. Numbers slips.

Mr. Nybell: I object.

The Court: Objection overruled.

Record page 20:

Q. I now hand to you what has been marked for identification purposes as State's Exhibit Number 3 (A) through (L). I now ask you to examine those, tell us whether or not you have ever seen them before?

A. Yes, I have my initial on them also, and the date.

Q. Where did you see them before, sir?

A. These were found on the seat. Apparently Mr. Gianfrancesco was sitting on them or tried to stuff them in the crack.

Q. All right. Based on your experience as a policeman, can you tell us what those are?

Mr. Nybell: Objection.

The Court: Overruled.

A. These are also numbers slips. That is a tally sheet. These are totals. The individual number slip is the popular size here, and this, these have been taken from numerous numbers slips and added up.

Q. Those are what you would call run-down sheets?

A. Run down sheets.

Mr. Nybell: Objection.

Q. Is that right?

The Court: Overruled. Go ahead.

A. That is right. On this particular one it has stock, that was taken off the stock market.

Record page 21:

Q. Now, these numbers, if you know, sometimes are played on the stock market, the results that day, and sometimes on the race results?

A. That is correct.

Q. Did you examine all of those sheets, Mr. Zins?

A. This one here, it has on the right side, it has stock, and on the left hand side it has race and stock, "R & S."

Q. You also initial that sheet?

A. Yes, sir. They are all initialed.

Q. Have you examined those, sir?

A. I have.

Q. And where did you find these?

A. Those were laying on the front seat right by the crack of the seat.

Q. I am now going to hand you what has been marked for identification purposes as State's Exhibit Number 4. I now ask you whether or not you ever seen that money before?

A. This is the money that was taken out of the right hand—from underneath the right-hand floor mat in Mr. Gianfrancesco's car.

Q. Did you take it out yourself personally?

A. I did take it out, yes.

Q. What did you do with that money after you placed him under arrest?

Record page 142:

3:30 o'clock P. M.,

The Court: You are hard-working jurors. You will have to stay until you reach a verdict. So then I would ask you whether there is a reasonable chance of reaching a verdict. Who is your foreman?

Jury Foreman: I am, Your Honor.

The Court: What do you say?

Jury Foreman: I wish I knew.

The Court: Give you another half hour?

Jury Foreman: We are closer to a verdict, but I don't know whether we will ever reach one, to tell you the truth.

The Court: Well, why don't you go and try for another half hour and let the court know by the buzzer when you are ready and we will reconsider this matter at that time. All right. Thank you.